

Exhibit 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
: :
-vs- : Case No. 1:18-cv-950
: :
COX COMMUNICATIONS, INC., et al., :
Defendants. :
: :
-----:

VOLUME 2 (A.M. Portion)

TRIAL TRANSCRIPT

December 3, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 knew that our songs were being infringed upon because they
2 overlapped with the sound recordings that were subject to the
3 notices that were delivered to Cox.

4 Q. Can you explain more by what you mean by "overlap"?

5 A. Every time you have a sound recording of a song, you have
6 a song involved. Again, two distinct rights, two distinct
7 creative works, but you can't have a sound recording of a song
8 without the song itself being implicated.

9 So when I say they overlap, I mean that if Cox is
09:46:53 10 receiving notices on behalf of a sound recording, then that
11 sound recording naturally contains a composition or a song,
12 many of which were ours that are listed here in this list that
13 we just went through.

14 Q. Are you familiar with the allegedly infringing files in
15 this case?

16 A. Yes, I am.

17 Q. Have you listened to any of those files?

18 A. I did to spot check the song titles that are on this list.

19 Q. And what did you determine after listening to those files?

09:47:25 20 A. That the songs indicated on this list, at least the ones
21 that I spot checked, were accurately reflected here. And that
22 Universal Music Publishing Group did indeed own or control
23 those songs.

24 Q. Mr. Kokakis, why did Universal Music Publishing Group file
25 this lawsuit against Cox?

1 MR. OPPENHEIM: I think --

2 THE COURT: All right. Let's go ahead.

3 MR. OPPENHEIM: I think he's going to like it, Your
4 Honor.

5 NOTE: A music excerpt is played.

6 BY MR. OPPENHEIM: (Continuing)

7 Q. Mr. McMullan, can you describe the importance of
8 recordings like the ones we just heard to UMG?

9 A. That's some very key hit music that UMG has helped bring
11:27:55 10 to the world. I mean, some of those are iconic pieces of our
11 culture. I heard music that I used to play in a bar band when
12 we did covers. I heard my prom song in there, "Wonderful
13 Night."

14 I mean, it's just very important music from very
15 important recording artists.

16 Q. So let me turn now away from the legitimate recordings
17 that we just listened to and turn to the infringing ones.

18 Have you had occasion to listen to any of the
19 infringing recordings in this case?

11:28:29 20 A. I did.

21 Q. How many?

22 A. I listened to 100 of them.

23 Q. And do you recall how the 100 recordings were selected?

24 A. They were picked randomly by a computer.

25 Q. And why did you listen to them?

1 A. I understood that during the course of this case there was
2 some issue raised about whether the recordings were in fact
3 copies of our recordings. We believe that the technology used
4 to find and select them is essentially infallible, but, you
5 know, I wanted to listen for myself and put aside any possible
6 doubt. And I listened to 100 of them.

7 Q. And when you say the issue was raised, do you know -- who
8 do you understand raised the issue?

9 A. Oh, I understand it was raised by Cox.

11:29:27 10 Q. And was there a reason you didn't listen to all of the UMG
11 recordings in this case?

12 A. Well, it's thousands of recordings, I think. So --

13 Q. And after you listened to them, what conclusion did you
14 come to?

15 A. They were exact copies of our copyrighted sound
16 recordings.

17 Q. How did they sound?

18 A. They sounded great. They sounded like exact copies of our
19 sound recordings.

11:29:52 20 Q. In your position at Universal Music Group, do you deal
21 with piracy issues?

22 A. Unfortunately, I do.

23 Q. So at a high level, can you describe for the jury what
24 piracy is.

25 A. Piracy is essentially the theft of our content. It's the

1 over the years. But I run a much tighter show than evidently
2 some Courts do. And I'll continue to yack up here, which is
3 not productive if necessary. But I hope that this is enough
4 information for you to -- that you'll look at your outlines and
5 modify questions.

6 Anything else we need to talk about before break?

7 MR. OPPENHEIM: Not from plaintiffs, Your Honor.

8 MR. ELKIN: No, Your Honor.

9 THE COURT: All right. We're in recess.

10 NOTE: The morning portion of the case on December 3,
11 2019, is concluded.

12 -----

13
14
15 CERTIFICATE OF COURT REPORTERS

16
17
18 We certify that the foregoing is a true and
19 accurate transcription of our stenographic notes.

20
21 /s/ Norman B. Linnell
22 _____
Norman B. Linnell, RPR, CM, VCE, FCRR

23
24 /s/ Anneliese J. Thomson
25 _____
Anneliese J. Thomson, RDR, CRR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
-vs- : Case No. 1:18-cv-950
COX COMMUNICATIONS, INC., et al., :
Defendants. :
-----: :

VOLUME 3 (A.M. Portion)

TRIAL TRANSCRIPT

December 4, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 MR. BUCHANAN: This is -- he's going to be handling
2 the examination this morning.

3 THE COURT: All right. Good morning, Mr. Brody.
4 Welcome. I know you've been watching the trial, and nice to
5 see you here at counsel table.

6 MR. BRODY: Thank you very much, Your Honor.

7 THE COURT: All right.

8 MR. BRODY: One just quick one, just to preserve our
9 record, I'm expecting that the '431 spreadsheet, which was the
10 subject of a number of motions previously, will be coming up
11 today. I'd just like to renew our motions in limine and court
12 preclusion with respect to that.

13 THE COURT: All right. They're so noted. Your
14 exceptions are noted, and your -- I think your record is very
15 adequately protected, sir. All right. Thank you.

16 MR. BRODY: I'm guessing we didn't change your mind.

17 THE COURT: I'm sorry?

18 MR. BRODY: I said I'm guessing we didn't change
19 your mind this morning.

20 THE COURT: Yeah, that's not -- that didn't happen,
21 no.

22 All right. Joe, let's get the jury in, please.

23 NOTE: At this point, the jury returns to the
24 courtroom; whereupon, the case continues as follows:

25 JURY IN

1 James, can we get slide 15 from
2 Ms. Frederiksen-Cross's deck up?

3 This is the verification module, right?

4 A. Correct.

5 Q. First I just wanted to make sure -- and this is partly
6 going back to our checklist -- when it says that there's a
7 download of full files, that's the step you reference there in
8 the middle.

9 A. Yes.

10 Q. Those are the files that are on that hard drive that we
11 were talking about before? Is that your understanding?

12 A. The files on the hard drive were produced, it's my
13 understanding, by MarkMonitor, and they are downloaded files,
14 yes.

15 Q. Right. They're the files that were captured during that
16 downloading step in the process?

17 A. Yeah. They are the files associated with the known
18 infringing hashes, the ones that have been verified. It's my
19 understanding that MarkMonitor captures new files whenever
20 they encounter them, but I think that all of them on that hard
21 disc, it's my understanding, are ones that have already been
22 through the verification process.

23 Q. And so that actually raises two questions. The first is
24 those are the files that are sent to Audible Magic, right, or
25 the files that are fingerprinted and the fingerprints are sent

1 to Audible Magic?

2 A. They are files who would have been fingerprinted at some
3 point in time and gone to Audible Magic or at least copies of
4 those files. I imagine they were just copied from the system
5 onto the hard drive.

6 Q. Okay. And then --

7 A. And if I can clarify, I'm just -- these are not the
8 reference files. They are the files that were unknown and
9 were identified just for the jury's benefit.

10 Q. Right. These are the -- these are the files that
11 MarkMonitor finds out on the internet, it downloads them onto
12 a hard drive at its system, it fingerprints them and sends
13 that fingerprint to Audible Magic for matching, right?

14 A. And gets back a confirmation, yes.

15 Q. Well, or a disconfirmation, depending.

16 A. Yeah. Thank you.

17 Q. Okay. And that's what's on the hard drive. The ones
18 that were downloaded, matched, those were all saved to the
19 hard drive, and that's what you inspected?

20 A. Yeah. A copy of those files are on the hard drive.

21 Q. Now, when Mark -- I'm sorry, when Audible Magic does its
22 matching of the fingerprints, you're aware that there are a
23 variety of levels of matching that Audible Magic can perform.
24 There's Level 1, Level 2, Level 3, I think, are the poetically
25 named choices.

1 ours with them this morning. This is a live demonstration.

2 THE COURT: That's what I said. I assume you shared
3 with them --

4 MR. ZEBRAK: Yes, sir.

5 THE COURT: Okay. I mumble also, so I apologize.

6 MR. ZEBRAK: No, that's my fault.

7 THE COURT: So let's do that. Before we resume,
8 let's -- you know, if you need to eat the ham sandwich out on
9 the courthouse steps, then let's get that done so that we can
10 come back at 5 minutes to two.

11 Mr. Buchanan, if you want to address that -- the
12 issue you raised this morning, we can do that right away when
13 we come back as well. Okay?

14 MR. OPPENHEIM: Thank you.

15 THE COURT: All right. We're in recess.

16 NOTE: At this point, the December 4, 2019, morning
17 portion of the case is concluded.

18
19 CERTIFICATE OF COURT REPORTERS

20 We certify that the foregoing is a true and
21 accurate transcription of our stenographic notes.

22 /s/ Norman B. Linnell
23 Norman B. Linnell, RPR, CM, VCE, FCRR

24 /s/ Anneliese J. Thomson
25 Anneliese J. Thomson, RDR, CRR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
: :
-vs- : Case No. 1:18-cv-950
: :
COX COMMUNICATIONS, INC., et al., :
Defendants. :
: :
-----:

VOLUME 3 (P.M. Portion)

TRIAL TRANSCRIPT

December 4, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 notice gets sent out to the ISP of the peer that we've observed
2 or collected.

3 Q. And would that notice also sometimes be called an
4 infringement notice?

5 A. Yes. Sorry, yeah, infringement notice.

6 Q. And in the case of RIAA, how would the infringement notice
7 be sent?

8 A. In the case of this program we're talking about, we were
9 sending them through e-mail.

16:55:07 10 Q. And who was the sender?

11 A. MarkMonitor.

12 Q. Did the RIAA participate in that process?

13 A. They, I believe, provided us with an e-mail address that
14 they wanted us to send it from. But we were the ones carrying
15 out the actual sending of the notices.

16 Q. And was that e-mail address a MarkMonitor address or an
17 RIAA address?

18 A. I believe it was an -- yeah, it was an RIAA address.

19 Q. Let me turn to the records that you kept for this process.

16:55:43 20 I believe PX-11 is already in evidence, Your Honor.
21 I'd ask to publish.

22 THE COURT: Yes, go ahead. You may publish any
23 exhibit that's already in evidence that you choose.

24 MR. OPPENHEIM: Thank you, Your Honor.

25 BY MR. OPPENHEIM: (Continuing)

1 Q. Do you recognize this document?

2 A. Yes.

3 Q. And can you just briefly -- is this a MarkMonitor
4 document?

5 A. Yes. This is a spreadsheet that we produced containing
6 the records of all of the song files that we downloaded and
7 verified using Audible Magic.

8 Q. Okay. I see there are four tabs.

9 A. Yes.

16:56:33 10 Q. And they relate to each of the networks; is that right?

11 A. Correct.

12 Q. If we look through the four tabs, would they generally
13 look similar?

14 A. Yes.

15 Q. Okay. Can you just quickly walk across this spreadsheet
16 and describe what's in it.

17 A. Sure. So we're on the first tab, meaning BitTorrent. So
18 all of these files were downloaded from BitTorrent.

19 The first column is a Torrent ID, it's just a unique
16:57:09 20 identifier that we attach to a specific torrent file.

21 The next column is Info Hash. So this is the SHA-1
22 hash value or the unique identifier for the torrent.

23 The next column is Matched As. This shows you the
24 key words that we matched when we were looking for the
25 potentially infringing file.

1 Q. So that was what you were searching for?

2 A. Correct.

3 Q. In the first step?

4 A. Correct. The next is Verified Type Name. This is simply
5 a flag in our database to indicate that the file has been
6 confirmed as real. So you'll see "real" in there.

7 Q. Mr. Duval, could you just scroll up and show that there --
8 on this tab.

9 Mr. Bahun, would you ever see on a spreadsheet like
16:58:06 10 this, this column ever have anything other than "real"?

11 A. No.

12 Q. And why is that?

13 A. Because this data set is for files that were contained in
14 the notices sent to Cox. And no notice would have been sent on
15 a file that wasn't identified as "real."

16 Q. And "real" meaning it was confirmed as what?

17 A. It was a confirmed infringing copy of the song.

18 Q. Okay. Sorry. I got us off the titles. There you go.
19 Can you continue on E, please.

16:58:43 20 A. Sure. So then you have First File Name. That's the name
21 of the individual song the first time we saw it.

22 The next is File Size --

23 Q. Can I just stop on that First File Name?

24 A. Oh, I'm sorry. Yeah.

25 Q. Is that first file name generated by Audible Magic?

1 bundled together in a single torrent.

2 So for purposes of displaying the data in this
3 spreadsheet, each row represents an individual song, but this
4 whole group was part of one torrent that you could download on
5 BitTorrent.

6 Q. So all of these Black Sabbath recordings would have been
7 in a single torrent?

8 A. Yes.

9 Q. Okay. Next column, please.

17:00:39 10 A. Next is the Torrent Name. So this is the name of the
11 torrent file that would allow the user to download the content.

12 Q. Now, that again -- is that generated by Audible Magic?

13 A. No. That's a value that we capture when we collect it.

14 Q. When you say "we capture it," it's not created by
15 MarkMonitor, is it?

16 A. Not created, no. It's an existing name of a file when we
17 discover it on BitTorrent.

18 Q. Is it only as reliable as the user who named it?

19 A. Yes.

17:01:08 20 Q. Okay. Next column.

21 A. The next is -- actually the next four are values that we
22 capture from Audible Magic. Audible Magic provides these to
23 us. So the first is the Audible Magic info ID, which is a
24 unique identifier. And then they give us artist, track, and
25 album.

1 So these are kind of what they have confirmed the
2 file as being.

3 Q. Now, for the recordings on this spreadsheet, listed on
4 this spreadsheet, did MarkMonitor -- does MarkMonitor have
5 copies of them?

6 A. Yes, we have, I believe, most of the songs that are in
7 this spreadsheet, they're -- we have copies of the songs, yeah.

8 Q. And were those produced in this case?

9 A. Yes.

17:02:01 10 Q. Your Honor -- and how -- just how were they produced?

11 A. So we provided a drive, a hard drive containing all of the
12 music files related, yeah.

13 MR. OPPENHEIM: Actually, can we open -- which is the
14 directory of the hard drive? 16, I think 16 is in. So publish
15 PX-16, please.

16 THE COURT: Is that in? Is that already admitted?

17 MR. OPPENHEIM: I thought it was if I -- yes? Yes.

18 THE COURT: Okay.

19 MR. OPPENHEIM: I believe it's in.

17:02:42 20 MR. BRODY: The directory is in, yes.

21 MR. OPPENHEIM: Is this it? I am sorry. I am having
22 trouble seeing it.

23 BY MR. OPPENHEIM: (Continuing)

24 Q. Do you recognize this?

25 A. Yes.

1 and say, you don't have everything, or you have at too much,
2 but that is entirely up to him.

3 THE COURT: He doesn't want you to represent on
4 direct examination that it contains everything.

5 MR. OPPENHEIM: I don't believe I have.

6 THE COURT: I know you haven't so far.

7 MR. OPPENHEIM: Okay.

8 MR. ELKIN: Your Honor, just one point. One issue
9 that we have with regard to the hard drive is that there hasn't
10 been any evidence that anyone at MarkMonitor has actually
11 listened to what it is.

12 There has been no foundation that Mr. Bahun has even
13 listened to what it is being offered for. I think there is a
14 foundational issue that I did address at summary judgment that
15 I don't think this testimony has overcome.

16 MR. OPPENHEIM: Every one of the files went through
17 Audible Magic, which did essentially the equivalent of a
18 digital listening. And Mr. McMullan testified that he listened
19 to a sample of them. And other witnesses -- as did -- excuse
20 me -- Barbara Frederiksen-Cross said she did. So did
21 Mr. Kokakis.

22 So that is simply not accurate.

23 MR. BRODY: At the same time, during
24 Ms. Frederiksen-Cross' examination, we saw examples where the
25 files that were identified in 16, the Audible Magic

1 spreadsheet, didn't match what was on that spreadsheet.

2 So, you know, it's --

3 THE COURT: Your exception is noted. I am going to
4 let it in. You clear up the fact that it -- what it is and
5 what -- where it came from. And I think that's sufficient.

6 All right. Your exceptions are noted.

7 MR. ELKIN: Thank you.

8 NOTE: The sidebar discussion is concluded; whereupon
9 the case continues before the jury as follows:

17:09:23 10 BEFORE THE JURY

11 THE COURT: All right. That exhibit will be
12 received.

13 And please proceed.

14 MR. OPPENHEIM: Mr. Duval, can you bring up PX 39. I
15 will apologize in advance, it's not a document. It's a big
16 hard drive of music files.

17 THE COURT: Okay.

18 BY MR. OPPENHEIM: (Continuing)

19 Q. Do you recognize this directory, Mr. Bahun?

17:09:48 20 A. Yes.

21 Q. And do you know where this -- and do you know what's
22 within this directory?

23 A. Yes. So there is -- we've organized it by a series of
24 folders. And inside of each folder are the song files that
25 were downloaded from the corresponding peer-to-peer networks.

1 Q. And was this produced by MarkMonitor?

2 A. Yes.

3 Q. Can we -- so it looks like that there is one folder that
4 is labeled Ares; is that right?

5 A. Correct.

6 Q. Mr. Duval, could you just open that, please.

7 Can you describe what's in this file, please, or this
8 folder.

9 A. Yes. For Ares, there were four audio files that we
10 downloaded and placed on the drive. So, yeah, there's -- you
11 see four separate MP3 files here.

12 Q. Okay. Can we go back to the main directory, Mr. Duval.

13 And there are a lot of BitTorrent ones, just like
14 No. 7, let's go down.

15 And so, what is this we are seeing right now,
16 Mr. Bahun?

17 A. Yes. So BitTorrent functions a little bit differently.
18 You will see some differences by peer-to-peer network. And so,
19 for BitTorrent, within each folder there is an individual
20 folder named what the hash value is for the infringing file.

21 So if you open one of those, inside you will see, in
22 this case, two files. There could be multiple though. If you
23 have a -- if you have a full album or something like that, you
24 may see a whole -- a larger set of files.

25 In this particular case, you see the MP3 file and

1 A. Yeah. Yeah. We do see files on the networks that are
2 mislabeled at times. This could be called anything. You know,
3 in this particular case, the file was called or was mislabeled
4 as Taylor Swift, "Love Story" in the file name. But when we
5 downloaded it and processed it, it was positively matched to
6 the song "Poker Face" by Lady Gaga.

7 Q. Okay. Mr. Duval, PX 39, please. The hard drive that we
8 looked at earlier.

9 Okay. And we were on eDonkey tab. So let's look in
10 eDonkey here, part one, please. And can you look for the one
11 that has a file named Taylor Swift, "Love Story."

12 A. Yes.

13 Q. Is that -- would that correlate back to what we were just
14 looking at on the other spreadsheet, Mr. Bahun?

15 A. It appears to. Could you switch back to the other file
16 just for a second?

17 Yes, it does correspond to this file.

18 Q. And how do you know?

19 A. I was looking at the hash value in the file name. So we
17:38:04 20 append that here. We add the hash value as the unique
21 identifier. So I am able to -- yeah, to determine that based
22 on that.

23 Q. Okay. So let's go back to the hard drive, please. And
24 Mr. Duval, let's listen and see whether it is Taylor Swift or
25 Lady Gaga.

1 NOTE: A music excerpt is played.

2 BY MR. OPPENHEIM: (Continuing)

3 Q. Mr. Bahun, do you recognize that recording?

4 A. Yes, I do.

5 Q. You recognize that recording?

6 A. Yes.

7 Q. Now, was that Taylor Swift or Lady Gaga?

8 A. That was -- that was Lady Gaga.

9 Q. Let's turn to PX 12, please. I am sorry.

10 Did you -- just the first page of it.

11 So we have a stipulation on the first page of PX 12.

12 THE COURT: All right.

13 MR. OPPENHEIM: So if you could publish just the
14 first page, please, Mr. Duval.

15 BY MR. OPPENHEIM: (Continuing)

16 Q. Do you recognize this document, Mr. Bahun?

17 A. Yes.

18 Q. Can you describe what it is?

19 A. This is a summary of the notices that we sent to Cox
17:39:51 20 between 2012 and 2015.

21 Q. And did you assist in the preparation of this summary?

22 A. Yes.

23 Q. And can you describe the difference between the column
24 that says Full Data Set and the column that says February 1,
25 2013, to November 26, 2014?

CERTIFICATE OF COURT REPORTERS

We certify that the foregoing is a true and
accurate transcription of our stenographic notes.

/s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR

/s/ Anneliese J. Thomson
Anneliese J. Thomson, RDR, CRR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
: :
-vs- : Case No. 1:18-cv-950
: :
COX COMMUNICATIONS, INC., et al., :
Defendants. :
: :
-----:

VOLUME 4 (A.M. Portion)

TRIAL TRANSCRIPT

December 5, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 program, right?

2 A. I know that -- I know that that was the type that was
3 being used, yes.

4 Q. And they selected Level 3 for the CAS program, correct?

5 A. I believe so.

6 Q. Do you know why the RIAA chose a higher level for CAS than
7 it chose for Cox?

8 A. No.

9 MR. OPPENHEIM: Objection to the use of the term
09:46:17 10 "higher." He hasn't established that Level 3 was higher than
11 Level 1.

12 THE COURT: All right. Sustained. He's --

13 BY MR. BRODY: (Continuing)

14 Q. Do you know why RIAA chose Level 3 for CAS and Level 1 for
15 Cox?

16 A. No.

17 Q. I want to ask a series of questions that kind of start
18 with the hard drive that we looked at yesterday.

19 We played some songs off a hard drive that you folks
09:47:02 20 created, and I think that's Exhibit -- Plaintiff's Exhibit 39.

21 Do you recall that generally?

22 A. Yes.

23 Q. Okay. When was that hard drive created? When were those
24 songs put on that hard drive?

25 A. I believe it was -- I can't tell you for certain, but I

1 think it was the end of 2015, beginning of 2016, around that
2 time frame.

3 Q. So that would have been two years after the end of the
4 notice period here?

5 A. Yes.

6 MR. BRODY: Your Honor, may I approach the bench?

7 THE COURT: Yes, sir.

8 NOTE: A sidebar discussion is had between the Court
9 and counsel out of the hearing of the jury as follows:

09:47:54 10 AT SIDEBAR

11 THE COURT: All right.

12 MR. BRODY: Your Honor, I move to strike Exhibit 39.

13 It was identified as copies of the recordings that
14 were downloaded, but it obviously was made two years after they
15 were downloading the files.

16 MR. OPPENHEIM: That's not what he asked the -- I'm
17 sorry, Your Honor. I didn't mean to interrupt you.

18 THE COURT: Well, that's an insufficient basis for
19 striking it. Just the timing of when it was made doesn't make
09:48:20 20 it any more or any less reliable unless you can establish that,
21 right?

22 MR. BRODY: Maybe I misunderstood, but I thought the
23 testimony was that these were the files that they downloaded
24 and then sent to Audible Magic and then, you know, put in the
25 notices. So these were supposed to be, if we want to know what

1 Audible Magic checked, we're supposed to be able to listen to
2 these files. But that can't be the case because they were --
3 the files were made and saved two years after, four years after
4 the notices were sent. And they were submitted to Audible
5 Magic.

6 MR. OPPENHEIM: First off, the infringing recordings
7 aren't submitted to Audible Magic. So that's incorrect.

8 MR. BRODY: The fingerprints, I'm sorry.

9 MR. OPPENHEIM: But all he asked the witness was when
09:49:02 10 were these put on the hard drive.

11 THE COURT: Right.

12 MR. OPPENHEIM: He hasn't established anything that
13 he just said.

14 THE COURT: That's an insufficient basis. Your
15 motion is denied. Your exception is noted.

16 MR. BRODY: Okay.

17 THE COURT: I mean, if you want to continue to a
18 probe further --

19 MR. BRODY: I will.

09:49:17 20 THE COURT: -- that's fine.

21 MR. BRODY: We'll find out.

22 THE COURT: Okay. Thank you.

23 NOTE: The sidebar discussion is concluded; whereupon
24 the case continues before the jury as follows:

25 BEFORE THE JURY

1 THE COURT: All right, please proceed.

2 BY MR. BRODY: (Continuing)

3 Q. Mr. Bahun, how did the files get onto the hard drive?

4 Audible Magic -- I am sorry -- MarkMonitor put them there?

5 A. Yes.

6 Q. And where did you put them there from? Where were they
7 when you put them there?

8 A. One of our systems where we would -- where we would have
9 stored the files.

09:50:11 10 Q. Okay. So you had them -- and when did they go onto your
11 system?

12 A. I'm sorry, I don't quite understand the question.

13 Q. You said that they were -- they would have come from some
14 place in your system where you stored the files. I just wanted
15 to know when they were stored on your system, wherever they
16 were stored.

17 A. I don't know the exact date. I mean, they would have been
18 different dates.

19 Q. Would they have been stored on the system when they were
09:50:46 20 first downloaded from the Internet -- from a peer-to-peer
21 network?

22 A. Possibly some of them. I don't recall the specific
23 details. I mean, they are -- they are the files based on the
24 hash value, you can determine that.

25 Q. I understand. I mean, they are files and they have hash

1 value and, you know, that matches or it doesn't.

2 What I was trying to ask and understand was where
3 they -- how you came to possess them?

4 A. So we downloaded them from the peer-to-peer networks.

5 Q. And you downloaded them at different times?

6 A. Yes.

7 Q. Some of them were downloaded the first time you found a
8 file, and some of them were downloaded at other times?

9 A. Yes.

09:51:43 10 Q. And I think you said you weren't sure what those other
11 times might have been?

12 A. Right. And some files are downloaded multiple times, you
13 know, throughout the course of the time period we are talking
14 about.

15 MR. BRODY: Your Honor, I would renew my objection.

16 THE COURT: Denied.

17 BY MR. BRODY: (Continuing)

18 Q. Now, the files that you downloaded and stored on your
19 system, were some of them downloaded from BitTorrent?

09:52:27 20 A. Yes.

21 Q. Were some of them downloaded from eDonkey?

22 A. Yes.

23 Q. Were some of them downloaded from Gnutella?

24 A. Yes. I don't think that any of the Gnutella files -- in
25 the form that we produced the drive, I don't think there were

1 Q. Dr. McCabe, let's turn to the first slide. I believe you
2 said you did -- you had two assignments in this case, a works
3 in suit analysis and a repeat infringer analysis, correct?

4 A. That's correct.

5 Q. Okay. So let's review assignment one, the works in suit
6 analysis. Would you explain to the jury what your assignment
7 was with respect to the works in suit analysis.

8 A. Yeah, so the first line below the title defines the scope
9 of my analysis. Sometimes we -- or I would call that a frame,
10 it's a statistical term. So the frame here is what are called
11 the works in suit. And there are 10,017 of those works.

12 There are four icons below that. And these are the
13 requirements that I used or applied to accomplish the works in
14 suit task.

15 So the first requirement is that the work -- and this
16 is analysis about the works in suit. Again, it's the 10,017
17 works that we're talking about. So that work must in an
18 infringement notice -- an infringement notice during the claim
19 period.

12:29:54 20 The second is that the work in suit should be in a
21 notice that is the third or later notice for a particular
22 subscriber.

23 In other words, I labeled the notices as a first, a
24 second, a third, et cetera. So I only looked at third or later
25 notices.

1 Next, the infringing notice must contain the work in
2 suit.

3 And the fourth requirement is that the infringing
4 file is on a hard drive that was created by MarkMonitor.

5 Q. Dr. McCabe, I would like to draw your attention to the
6 third bullet. A moment ago I believe you said the infringed --
7 well, could you explain what that third bullet is in a little
8 more detail.

9 A. Yes. So the notice contains information. And the
12:30:54 10 information, depending upon the protocol, points either to one
11 work in suit or it can -- in the case of BitTorrent, it can
12 refer to a collection of works.

13 Q. What is the significance to the reference to "infringing
14 file" in that third bullet?

15 A. The infringing file is part of the notice. And that
16 points to -- through these hashes, it points -- it gets us to
17 the works in suit.

18 Q. Do you have an understanding as to whether the infringing
19 file is identified in the notice?

12:31:34 20 A. Yes, it is.

21 Q. And by the way, when we talk about notices, what are we
22 referring to here?

23 A. They are the e-mails sent by MarkMonitor to Cox.

24 Q. Okay. And were you able to form any -- and, first of all,
25 you said that you're not providing any -- you're not testifying

1 So on this slide, the claim period is denoted or
2 described by the yellow bar at the top. It starts February 1,
3 2013, and ends November 26, 2014.

4 And the checkmark means that all of the 10,017 works
5 in suit did correspond to a notice during this claims period.

6 Q. Was the claim period the same claim period for every
7 single plaintiff group in this case?

8 A. No. There is a note below the bars for the years that --
9 for the Sony ATM/EMI claims, the start of the claim period was
12:34:24 10 August 1, 2013, rather than February 1, 2013. But that period
11 was the same, the ending date of the claims period for Sony
12 ATM/EMI was the same as for all the others.

13 Q. And, Dr. McCabe, would you briefly walk the jury through
14 the remaining three checked boxes on this slide.

15 A. Yes. So the second is that -- this issue of the third or
16 later notice for a particular subscriber. So that was
17 satisfied for all of the 10,017 works.

18 That the infringing file in the notice contains the
19 work in suit.

12:35:11 20 And that there is a copy of the work on a hard drive
21 created by MarkMonitor.

22 So all of these -- the four requirements are
23 satisfied. And the term I'm using is that means those works in
24 suit were qualified.

25 Q. Dr. McCabe, what data sources did you use for your

1 analysis in this case?

2 A. Yes, I think I prepared a slide for that. That should be
3 the next one.

4 Q. Or actually, Dr. McCabe, let me ask you a question. A
5 moment ago when you were explaining each of the four
6 requirements for your analyses were satisfied, you used the
7 term "qualified."

8 What does that mean?

9 A. It basically means that the work in suit is connected to a
10 notice. So we could view it the other way around. You start
11 with the notice, it points to the work in suit. So there is a
12 direct connection between those two.

13 And that's what I'm calling qualified, that I can
14 draw the link from the notice to the work in suit.

15 Q. Okay. Well, let's turn back to your data sources, and I
16 can ask you a few questions about that.

17 So what is being depicted in the left column with
18 respect to data sources?

19 A. The left column describes the source of the data sets. So
12:37:04 20 there are three sources, MarkMonitor, Cox, and the plaintiffs.

21 Q. And what data from MarkMonitor was within your analysis in
22 this matter?

23 A. So MarkMonitor is the top data source there. And there
24 are three files listed to the right. The first is the notices
25 or the -- actually, I didn't have the notices, but I had a file

1 that lists the notices and the information contained in each
2 notice. So all that -- these are all data files that I had.

3 So there is a file for notices from MarkMonitor.
4 There is a file for the downloads that MarkMonitor downloaded.
5 And there is a file from MarkMonitor about the Audible Magic
6 procedure or connections to go from hashes to works.

7 Q. And what is depicted with respect to Cox in terms of data
8 from Cox that you considered within your analysis?

9 A. So Cox also provided three data sets. The first one
10 listed there is subscriber identification. So the Cox CATS
11 system has identifiers for subscribers. It was necessary to
12 have that information to be able to perform my analysis.

13 So it's the file itself connected subscriber IDs with
14 notices.

15 The second file is what I have called the ticket
16 file. It's the large file that contains the tickets that Cox
17 recorded in their CATS system.

18 And the third is a file that identifies Cox
19 subscribers as -- I used it to distinguish residential from
12:39:17 20 business subscribers.

21 Q. And when you say the third file, was that the billing
22 information file?

23 A. I am sorry, the billing information file, yes.

24 Q. And, finally, to the right of plaintiffs, there is an
25 Exhibit A and B. What are those two files?

1 the Court to consider how that -- how we proceed.

2 THE COURT: Yeah. If putting this video on before
3 those witnesses involves having that jury sit and twiddle their
4 thumbs while we're going through objections, then I'm not going
5 to permit it. We're going to do it with live witnesses.

6 And after they're done, after we send the jury home,
7 we can go through the deposition designation objections.

8 This case has been going on a long time, and the last
9 thing that I'm going to permit is us to have the jury sitting
10 around while we're yakking about whether something is
11 objectionable.

12 So thank you for bringing that to my attention.

13 All right. So I have a plea. The defendant is in
14 custody. So the, you know, pencils and that kind of stuff
15 probably aren't a good idea.

16 All right. We're in recess.

17 NOTE: The morning portion of the case on December 5,
18 2019, is concluded.

19
20 CERTIFICATE OF COURT REPORTERS

21 We certify that the foregoing is a true and
22 accurate transcription of our stenographic notes.

23 /s/ Norman B. Linnell
24 Norman B. Linnell, RPR, CM, VCE, FCRR

25 /s/ Anneliese J. Thomson
Anneliese J. Thomson, RDR, CRR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----: :
SONY MUSIC ENTERTAINMENT, et al., :
Plaintiffs, :
-vs- : Case No. 1:18-cv-950
COX COMMUNICATIONS, INC., et al., :
Defendants. :
-----: :

VOLUME 6 (A.M. Portion)

TRIAL TRANSCRIPT

December 9, 2019

Before: Liam O'Grady, USDC Judge

And a Jury

1 So brings back a lot of good memories.

2 Q. And how -- what do these sound recordings represent to
3 Warner Music Group?

4 A. They're some of the most iconic songs in our catalog and,
5 you know, we want to make sure they're protected.

6 Q. Have you listened to any of the infringing music files in
7 this case?

8 A. I have.

9 Q. How many?

10:18:19 10 A. I listened to 100.

11 Q. And how were those 100 selected?

12 A. It was a random statistical sample.

13 Q. And why did you listen to a sample of the infringing music
14 files in this case?

15 A. I wanted to make sure that I familiarized myself with what
16 was being infringed and whether they were in fact our songs.

17 Q. And what did you conclude after listening to those files?

18 A. That they are in fact our songs listed within the exhibit.

19 Q. All right. Let's turn to the revenues generated from
10:18:55 20 Warner Music's -- Warner Music Group's sound recordings.

21 What are the different ways that Warner Music makes
22 money from its sound recordings?

23 A. We will sell our music in various formats to customers.
24 And we will also license music into sound tracks, into
25 commercials, films.

1 marked Plaintiff's 81 --

2 THE COURT: Why don't we stop here since you have got
3 a new document, and it's 1 o'clock.

4 All right. We are going to break for an hour, and we
5 will come back and continue to listen to the deposition.

6 So have a good lunch, and we will see you at
7 2 o'clock.

8 Thank you, you are excused.

9 NOTE: At this point the jury leaves the courtroom;
10 whereupon the case continues as follows:

11 JURY OUT

12 THE COURT: Okay. Anything before we break?

13 MR. ELKIN: Not here, Your Honor.

14 MR. OPPENHEIM: Not from the plaintiffs, Your Honor.

15 THE COURT: All right. We're in recess for one hour.

16 NOTE: The morning portion of the case on December 9,
17 2019, is concluded.

18 -----

19
20 CERTIFICATE OF COURT REPORTERS

21 We certify that the foregoing is a true and
22 accurate transcription of our stenographic notes.

23 /s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR

24 /s/ Anneliese J. Thomson
25 Anneliese J. Thomson, RDR, CRR